

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1005 OF 2005

Smt. Satyama Narsayya Ige Appellant
Versus
Vishwanath Shankarappa Babanagare ..Respondent
Mr.S.D.Thokade and Ramdas P.Sabban for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH SEPTEMBER, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Ad-hoc Addl. District Judge, Solapur dated 15.12.2004 allowing the appeal and setting aside the judgment and order passed by Civil Judge, Junior Division, Solapur dated 26.3.1998 dismissing the suit.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for vacant possession of the suit premises by removing the shed there from and consequential reliefs along with costs. The plaintiff's suit was contested by the defendants on

various grounds and seek dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove that he was owner of the suit property and defendant was trespasser thereon. However, the trial court was of the view that the suit was barred by Section 22(1) of the Slum Act and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Court after hearing both the parties and on the basis of available evidence decreed the suit by allowing the appeal.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that the trial court has rightly held that Provision of Section 22(1) of the Slum act stipulated that no person shall, except with the previous permission in writing of the competent authority, institute, after the commencement of the Slum Act, any suit or the proceeding for obtaining any decree or order for eviction of any occupier from any building or land in the Slum area. In this regard it must be noted that

there cannot be two opinions regarding the statutory provision under the said Act. However, it is to be seen as to when the Slum Act was made applicable to the impugned property. It is needless to mention that before declaration any of the area as slum area requirements contemplated under Section 4 of Maharashtra Slum Areas (Improvements, Clearance and Redevelopment) Act, 1976 are required to be satisfied. Therefore, unless area was declared as slum area by competent authority such area cannot be termed as slum area. In this regard it must be noted that the suit came to be instituted on 27.10.1993 whereas the gazette vide Exh.65 indicates that the competent authority has declared the suit property as slum as on 29.11.1993, which was published on 6.1.1994. In view of this position, there cannot be dispute with regard to the fact that the suit was instituted earlier and there cannot be application of Section 22(1) of the said Act to the suit property. The learned appellate court judge has rightly held that under this aspect and in view of the evidence on record, the suit cannot be said to be barred by provision of Section 22 of the said Act. The learned counsel for the appellant also sought to raise other points, however, those are questions of fact, and therefore, cannot be

considered at this stage. In the result the appeal has no merits and stands dismissed with no order as to costs.